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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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23448	7590	10/26/2010		
INTELLECTUAL PROPERTY / TECHNOLOGY LAW			EXAMINER	
PO BOX 14329			KALLIS, RUSSELL	
RESEARCH TRIANGLE PARK, NC 27709				
			ART UNIT	PAPER NUMBER
			1638	
			MAIL DATE	DELIVERY MODE
			10/26/2010	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/587,312

Applicant(s)

PAEK ET AL.

Examiner

RUSSELL KALLIS

Art Unit

1638

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 August 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 4-35 is/are pending in the application.
- 4a) Of the above claim(s) 5 and 9-35 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 4 and 6-8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/GS/US)
Paper No(s)/Mail Date _____

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claims 1, and 4-35 are pending. Claims 5 and 9-35 are withdrawn. Claims 1, 4 and 6-8 are examined.

Rejection of Claims 1, 4 and 6-8 under 35 U.S.C. 112, second paragraph is withdrawn in view of Applicants' amendment.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Election/Restrictions

Currently amended claim 1 is directed to inventions that are independent or distinct from the invention originally claimed for the following reasons: each of the added nucleic acid sequences of SEQ ID NO: 22-28 and amino acid sequences of SEQ ID NO: 31-58 are not a member of a single structurally and functionally related genus, but rather constitutes an independent and patentably distinct invention. Separate searches and considerations would be required for examination of each of the nucleic acid sequences.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, SEQ ID NO: 22-28 including previously non-elected SEQ ID NO: 2-21 and the amino acid sequences of SEQ ID NO: 31-58 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Claim Rejections - 35 USC § 112

Claims 1, 4 and 6-8 remain rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. THIS IS A NEW MATTER REJECTION. This rejection is maintained for the reasons of record set forth in the Official action mailed 4/05/2010. Applicant's arguments filed 8/05/2010 have been considered but are not deemed persuasive.

Applicant asserts that support for "wherein the sequence is selected from the group consisting of SEQ ID NOs 30 to 58" is found in Figures 20-22 is not found persuasive because the specification only supports SEQ ID NOs 30-50 and 57 as an SGR gene fragment (see page 7 lines 9-11 directed to nucleotide fragments that encode the above protein fragments). Further, Applicant asserts that support can be found for SEQ ID NOs 51-56 and 58 in and of themselves in the sequence listing and that the amended Claim now recites "A SGR gene encoding a polypeptide comprising an amino acid sequence selected from the group consisting of SEQ ID NOs 30 to 58". However, the specification only supports SEQ ID NOs 30-50 and 57 as an "SGR gene". Further, the specification indicates that SEQ ID NOs 51-56 and 58 are partial sequences that are missing significant portions of the region that Applicant has defined as an essential domain of an "SGR gene" and argued that it constitutes the special technical feature of the invention. Thus, the claims are drawn to NEW MATTER. Applicant is invited to point to the page and line number in the specification where support can be found. Absent of such support, Applicant is required to cancel the new matter in the reply to this Office Action.

Claim Rejections - 35 USC § 102

Claims 1 and 6-7 remain rejected under 35 U.S.C. 102(b) as being anticipated by Yamada, K. *et al.* GenBank GI:17380888; 18 September 2002 in light of Ren *et al.* Plant Physiology 2007 Jul;144(3):1429-41.

The claims are broadly drawn to any SGR gene encoding any protein sequence of SEQ ID NO: 30 wherein the length of the protein sequence could be as small as a dipeptide.

Yamada teaches an *Arabidopsis* open reading frame encoding a protein of SEQ ID NO: 48 encoded by SEQ ID NO: 19 when viewed with the evidence of Ren that reveals a stay green protein of *Arabidopsis* also known as NYE1; wherein the isolated DNA was cloned into a recombinant DNA vector and host microorganism. Amending the claim to recite “the amino acid” instead of “an amino acid” would obviate this rejection.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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Claims 4 and 8 are deemed free of the prior art given the failure of the prior art to teach or reasonably suggest an SGR gene of SEQ ID NO: 1 encoding SEQ ID NO: 30 and a plant transformed therewith.

No claim is allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to RUSSELL KALLIS whose telephone number is (571)272-0798. The examiner can normally be reached on M-F 8:30-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anne Marie Grunberg can be reached on (571) 272-0975. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Russell Kallis/
Primary Examiner, Art Unit 1638
October 19, 2010